

**Marked-up Version of Amended Claims**

Cancel all claims of record 1 through 5.

- 1) A cylindrical duck nesting house made of white, plastic material
  - (a) consisting of a canister and removable lid with handle
  - (b) providing an entrance and egress hole in the said canister
  - (c) providing a mesh grid climbing ladder secured to the bottom of said canister and secured to the vertical inside of said canister whereby the ducklings can exit the nest upon hatching.
- 2) A round, hollow pole made of white, plastic material
  - (a) consisting of one segment
  - (b) providing a water closet fitting to the top of said pole to secure said pole to bottom of said duck nesting house
  - (c) providing an end cap fitted to the bottom of said pole whereby said pole can be planted in a wetlands area without water seepage to the inside of pole chamber.
- 3) A round, segmented pole made of white plastic material
  - (a) consisting of two said pole segments on a vertical plane
  - (b) providing a water closet fitting to the top of the top pole segment to secure to the bottom of said duck nesting house
  - (c) providing the top pole segment sliding inside the bottom pole segment of slightly larger diameter
  - (d) providing stabilizing collars encircling the bottom end of said top pole segment
  - (e) providing an end cap fitted to the bottom of said bottom pole segment
  - (f) providing an end cap to be used on the top of the said bottom pole segment whereby the said bottom pole segment can be permanently planted in shoreline areas and temporarily capped with said end cap at the end of the nesting season.
- 4) A cylindrical duck nesting house made of white, plastic material as claimed in Claim 1 further comprising: a round, hollow pole made of white, plastic material; said pole including one segment; a water closet fitting to the top of said pole to secure said pole to bottom of said duck nesting house; an end cap fitted to the bottom of said pole whereby said pole can be planted in a wetlands area without water seepage to the inside of pole chamber.
- 5) A cylindrical duck nesting house made of white, plastic material as claimed in Claim 1 further comprising: a round, segmented pole made of white, plastic material; said pole including two segments on a vertical plane; a water closet fitting to the top of the top pole segment to secure to the bottom of said duck nesting house; the said top pole segment sliding inside the bottom pole segment of slightly larger diameter; stabilizing collars encircling the bottom end of said top pole segment; an end cap fitted to the bottom of said bottom pole segment; an end cap on the top of the said bottom pole segment whereby the said bottom pole segment can be permanently planted in shoreline areas and temporarily capped with said end cap at the end of the nesting season.

## **ARGUMENT**

Sonnek (US 6,405,679) describes a colony birdhouse, especially for purple martins, that is structurally distinguished from the present invention. The birds using the Sonnek colony birdhouse have no use for a climbing ladder for two reasons. First, the distance from the nest to the egress hole is minimal in length. This design assists the parent birds to easily bring food to and feed the baby birds through the egress hole. Second, baby purple martins are not physically capable of leaving the nest until they are old enough to open their eyes, grow feathers and fly from the nest. Purple martins are small birds, weighing only a few ounces. In contrast, the present invention was made for the much larger wood duck, a migratory waterfowl. Wood ducks have habitat requirements that are quite different from that of purple martin birds. The mesh ladder of the present invention is designed to assist ducklings that, by instinct, will leave the nest within 24 hours of hatching from the egg. The ducklings have an instinctual need to leave the nest to find food and shelter in a pond. This is quite different from baby purple martins that spend several months in a nest.

Smith (US 4,928,631) describes a rectangular bluebird house with a side viewing window. The Smith invention would be totally unusable by wood ducks as the structure does not deter predators. Smith describes a birdhouse with corners, edges, a mounted frame extended entryway around the ingress hole plus a swinging door for viewing. All of these features of the Smith birdhouse provide means for predators to grasp onto the birdhouse and gain access to the eggs inside. The Smith birdhouse may be suitable for attracting bluebirds to someone's backyard but it is not suitable for migratory waterfowl. The sloping roof on the Smith birdhouse would actually interfere with the flight characteristics of the wood duck. The wood duck flies directly into the inside of its nesting cavity before landing. The wood duck does not stop flying until it lands inside the nesting cavity. The roof flange of the Smith birdhouse would hinder the natural flight path for the wood duck. The structure of the present invention was specifically designed for the protection of wood ducks during the egg nesting process. The present invention features a round canister so predators have nothing to grasp onto to gain access to the nesting cavity. This is an improvement over all the edges on the Smith birdhouse which provide grasping and leveraging places for predators. The present invention is made of smooth plastic. This feature makes it impossible for predators using their claws to make indentations or gouges on the surface of the canister for climbing. Smith features a birdhouse of wood material, which would be easily penetrable by the claws of predators. The rough wood surface provides a means by which predators can use their claws to make indentations or gouges in the wood surface and climb up to the ingress hole. The present invention solves the problems inherent in the Smith bluebird house.

Perkins (US 1,258,703) describes a cylindrical birdhouse with a cone shaped pointed roof and a platform or perch under the birdhouse. The pointed roof on the Perkins birdhouse provides a grasping item which predators will use for leverage to gain access to the nesting cavity. Perkins describes the roof as made of material such as asphalt roof shingle. This material has a rough surface and is penetrable by the claws of predators. The overhanging edge of the roof also provides a place for predators to grasp while accessing the inside of the nesting cavity. The present invention solves the problems noted in the Perkins birdhouse. The present invention with all surfaces of smooth plastic, will deter predators as it is too slippery for predators to grasp. Predators cannot make indentations for climbing in the smooth plastic of the present invention.

Perkins describes a platform or perch under the birdhouse. The present invention does not have a perch or platform as this would only make it easier for predators to gain access to the ingress hole. Wood ducks do not need a perch, as it is not their habit to stop in flight before entering the nesting cavity. Wood ducks fly directly to the inside of the nesting box before ending the flight. Perkins was not designed for the habits of wood ducks. The present invention solves the problems relating to predators as found in Perkins.

Burns (US 4,768,466) describes a two part nesting box to be used by birds or animals. Burns describes a cylinder body that rotates inside an outside sleeve. Burns is similar to Smith in that the canopy over the ingress hole may interfere with the normal flight path of the wood duck and therefore be unusable by wood ducks. Burns describes a sleeve which forms a C shape around the inside body of the birdhouse. The edge of the C shape provides a grasping place for predators to use to gain access to the nesting compartment. The present invention solves these problems. There is no canopy or other obstacle in the present invention that could interfere with the natural flight path of the wood duck to gain entrance to the inside of the nesting cavity. There are no edges on the present invention to provide grasping places for predators. The structure of the present invention was designed specifically to thwart the peculiar activities of predators. The sides of the present invention are round, to make it difficult for predators to hang onto something while attempting to gain access to the nesting cavity. The present invention has a smooth surface of plastic. This makes it impossible for predators to use their claws to make indentations in the smooth surface and use these gouges to climb upwards. There are no edges or protuberances on the present invention that would assist a predator in climbing upwards toward the entrance of the nesting cavity. Burns further describes a mounting clip to attach the birdhouse to trees or a down drainpipe on a house. The present invention is specifically designed with a separate pole to ensure the nesting box would not be used near trees as a location near trees only increases the opportunity for predators to gain access to the nesting cavity.

Wade (US 3,643,631) describes a rectangular metal birdhouse with double wall construction to achieve temperature control within the nesting compartment. The rectangular shape of the Wade birdhouse provides corners and edges for predators to use to gain entrance to the nesting cavity. The present invention is a round cylindrical shape. This shape deters predators as the predators cannot hang onto anything while they attempt to gain access to the inside of the nesting cavity. The Wade birdhouse is made of metal, which quickly deteriorates from rain and snow making it unusable and expensive to replace. The present invention is made of plastic material, which does not deteriorate due to rain or snow and does not need to be replaced. Wade further describes a double wall construction to maintain temperature control for developing eggs. The plastic material used in the present invention is of sufficient thickness to provide temperature control for developing wood duck eggs without the need for double wall construction. The plastic material used in the present invention does not absorb heat as does the Wade metal birdhouse. Wade further describes a wire screen or mesh ladder used inside the birdhouse to assist the egress of new birds from the nest. The adult wood duck flies directly from a pond into the nesting cavity with water dripping from her body and webbed feet. This water would soon rust a metal wire screen and make it unusable. The present invention uses a plastic mesh climbing ladder which will not deteriorate with water. The plastic mesh grid of the present invention is designed for the webbed feet of the wood duck. The spaces in the grid of the present invention are large enough to allow for the wide webbed feet of wood ducks when exiting the nest. The structure of the mesh grid is critical for a wood duck as the ducks cannot get food if they are unable to climb out of the nesting cavity. Many adult bird species bring food to the baby birds in the nest. Wood ducks do not bring food to the baby ducks in the nest. The adult wood duck calls to the baby ducks in the

nest, to leave the nest within 24 hours of hatching from the egg. The new baby ducklings do not ever return to the nest. The adult wood duck and new baby ducks must find food and shelter on the pond. The structure and material of the mesh climbing ladder is critical to the survival of the wood duck. The material used in the present invention and its structural design ensures the ducklings have the best chance of leaving the nest and to find food and shelter with the adult duck on the pond.